

**321J.2 OPERATING WHILE UNDER THE INFLUENCE OF ALCOHOL
OR A DRUG OR WHILE HAVING AN ALCOHOL CONCENTRATION OF
.08 OR MORE
(OWI) .**

1. A person commits the offense of operating while intoxicated if the person operates a motor vehicle in this state in any of the following conditions:

- a. While under the influence of an alcoholic beverage or other drug or a combination of such substances.
- b. While having an alcohol concentration of .08 or more.
- c. While any amount of a controlled substance is present in the person, as measured in the person's blood or urine.

2. A person who violates subsection 1 commits:

- a. A serious misdemeanor for the first offense.
- b. An aggravated misdemeanor for a second offense.
- c. A class "D" felony for a third offense and each subsequent offense.

3. Penalties—First Offense. A first offense is punishable by all of the following:[1221]

- a. Imprisonment. A minimum period of imprisonment in the county jail of forty-eight hours[1222], but not to exceed one year,[1223] 7
punishable by
all of the following:

(1) Imprisonment in the county jail for not less than forty eight hours, to be served as ordered by the court, less credit for any time the person was confined in a jail or detention facility following arrest or for any time the person spent in a court-ordered operating-while-intoxicated program that provides law enforcement security. However, the court, in ordering service of the sentence and in its discretion, may accommodate the defendant's work schedule.

b. Eligibility for Deferred Judgment.[1224] With the consent of the defendant, the court may defer judgment and may place the defendant on probation upon conditions as it may require. A person is not eligible for a deferred judgment under section 907.3 if a person has been convicted of a violation of this section or the person's driver's license has been revoked under chapter 321J, and any of the following apply:

(1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with chapter 321J exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

(2) If the defendant has previously been convicted of a violation of section 321J.2, subsection 1, or a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(3) If the defendant has previously received a deferred judgment or sentence for a violation of section 321J.2, subsection 1, or for a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(4) If the defendant refused to consent to testing requested in accordance with section 321J.6.

(5) If the offense under chapter 321J results in bodily injury to a person other than the defendant.[1225]

Upon a showing that the defendant is not fulfilling the conditions of probation, the court may revoke probation and impose any sentence authorized by law. Before taking such action, the court shall give the defendant an opportunity to be heard on any matter relevant to the proposed action. Upon violation of the conditions of probation, the court may proceed as provided in chapter 908. Upon fulfillment of the conditions of probation and the payment of fees imposed and not waived by the judicial district department of correctional services under section 905.14, the defendant shall be discharged without entry of judgment. Upon violation of the conditions of probation, the court may proceed as provided in chapter 908.[1226]

c. Eligibility for Suspended Sentence.[1227] By record entry at the time of or after sentencing, the court may suspend the sentence and place the defendant on probation upon such terms and conditions as it may require including commitment to an alternate jail facility or a community correctional residential treatment facility to be followed by a term of probation as specified in section 907.7, or commitment of the defendant to the judicial district department of correctional services for supervision or services under section 901B.1 at the level of sanctions which the district department determines to be appropriate and the payment of fees imposed under section 905.14. A person so committed who has probation revoked shall be given credit for such time served. However, the court shall not suspend any mandatory minimum sentence of incarceration imposed pursuant to a violation of this section. Furthermore, the court shall not suspend any part of a sentence not involving incarceration imposed pursuant to section 321J.2, subsections 3(a), 4(a) or 5(a), beyond the mandatory minimum if any of the following apply:

(1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with chapter 321J exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

(2) If the defendant has previously been convicted of a violation of section 321J.2, subsection 1, or a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(3) If the defendant has previously received a deferred judgment or sentence for a violation of section 321J.2, subsection 1, or for a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(4) If the defendant refused to consent to testing requested in accordance with section 321J.6.

(5) If the offense under chapter 321J results in bodily injury to a person other than the defendant.[1228]

d. Fines and Fees.[1229] —(2)—Assessment of a fine of one thousand two hundred fifty dollars. However, in the discretion of the court, if no personal or property injury has resulted from the defendant's actions, the court may waive up to six hundred twenty-five dollars of the fine when the defendant presents to the court at the end of the minimum period of ineligibility, a temporary restricted license issued pursuant to section 321J.20.

(1) A civil penalty shall be assessed as provided in section 907.14 upon the entry of a deferred judgment, in an amount not less than the amount of any criminal fine authorized by law for the offense.[12210]

(2) As an alternative to a portion or all of the fine, the court may order the person to perform unpaid community service. However, the court shall not order the person to perform unpaid community service in lieu of a civil penalty or victim restitution. Surcharges and fees shall also be assessed pursuant to chapter 911.[12211]

e. ~~(3)~~ Driver's License Revocation.[12212] Revocation of the person's driver's license for a minimum period of one hundred eighty days up to a maximum revocation period of one year,[12213] pursuant to section 321J.4, subsection 1, section 321J.9, or section 321J.12,

~~subsection 2., which includes a minimum revocation period of one hundred eighty days, and may involve a revocation period of one year.~~

A revocation under section 321J.9 includes a minimum period of ineligibility for a temporary restricted license of ninety days.

but (1) ~~(a)~~ A defendant whose alcohol concentration is .08 or more

not more than .10 shall not be eligible for any temporary restricted license for at least thirty days if a test was obtained and an accident resulting in personal injury or property damage occurred. The defendant shall be ordered to install an ignition interlock device of a type approved by the commissioner of public safety on all vehicles owned or operated by the defendant if the defendant seeks a temporary restricted license. There shall be no such period of ineligibility if no such accident occurred, and the defendant shall not be ordered to install an ignition interlock device.

(2) ~~(b)~~ A defendant whose alcohol concentration is more than .10 shall not be eligible for any temporary restricted license for at least thirty days if a test was obtained, and an accident resulting in personal injury or property damage occurred or the defendant's alcohol concentration exceeded .15. There shall be no such period of ineligibility if no such accident occurred and the defendant's alcohol concentration did not exceed .15. In either case, where a defendant's alcohol concentration is more than .10, the defendant shall be ordered to install an ignition interlock device of a type approved by the commissioner of public safety on all vehicles owned or operated by the defendant if the defendant seeks a temporary restricted license.

a ~~(4)~~ f. Assignment to substance abuse evaluation and treatment,

course for drinking drivers, and, if available and appropriate, a reality education substance abuse prevention program pursuant to subsection 3section 321J.3.

4. Penalties- Second Offense. A second offense is punishable by all of the following:[12214]

a. Imprisonment.[12215] A minimum period of imprisonment in the county jail or community-based correctional facility for seven days[12216], but no longer than a period of two years.[12217]

b. Fines and Fees.[12218] Assessment of a minimum fine of one thousand eight hundred fifty dollars and a maximum fine of six thousand two hundred fifty dollars.[12219] Surcharges and fees shall be assessed pursuant to chapter 911.[12220] ~~b. An aggravated misdemeanor for a second offense, and shall~~

c. *Driver's License Revocation.*[1222] Revocation of the person's driver's license for a period of one year, if a revocation occurs pursuant to section 321J.12, subsection 2. If a revocation occurs due to test refusal under section 321J.9, or pursuant to section 321J.4, subsection 2, defendant's license shall be revoked for a period of two years.

d. Assignment to substance abuse evaluation and treatment, a course for drinking drivers, and, if available and appropriate, a reality education substance abuse prevention program pursuant to section 321J.3.

5. *Penalties- Third Offense.* A third offense is punishable by all of the following:[1222]

a. *Imprisonment.* Commitment to the custody of the Department of Corrections for an indeterminate term not to exceed five years, with a mandatory minimum term of incarceration of thirty days.

(1) If the court does not suspend a person's sentence of commitment to the custody of the director of the department of corrections under this paragraph "c", the person shall be assigned to a facility pursuant to section 904.513.

(2) If the court suspends a person's sentence of commitment to the custody of the director of the department of corrections under this paragraph "c", the court shall order the person to serve not less than thirty days nor more than one year in the county jail, and the person may be committed to treatment in the community under section 907.6.

b. *Fines and Fees.*[1223] Assessment of a minimum fine of three thousand one hundred twenty-five dollars and a maximum fine of nine thousand three hundred seventy-five dollars. Surcharges and fees shall be assessed pursuant to chapter 911.[1224]

c. *Driver's License Revocation.* Revocation of the person's driver's license for a period of six years, per section 321J.4, subsection 4.

d. Assignment to substance abuse evaluation and treatment, a course for drinking drivers, and, if available and appropriate, a reality education substance abuse prevention program pursuant to section 321J.3. ~~be imprisoned in the county jail or community-based correctional facility not less than seven days, and assessed a fine of not less than one thousand eight hundred seventy five dollars nor more than six thousand two hundred fifty dollars.~~

e. ~~A class "D" felony for a third offense and each subsequent offense, and shall be committed to the custody of the director of the department of corrections for an indeterminate term not to exceed five years, shall be confined for a mandatory minimum term of thirty days, and shall be assessed a fine of not less than three thousand one hundred twenty five dollars nor more than nine thousand three hundred seventy five dollars.~~

~~(1) If the court does not suspend a person's sentence of commitment to the custody of the director of the department of corrections under this paragraph "c", the person shall be assigned to a facility pursuant to section 904.513.~~

~~(2) If the court suspends a person's sentence of commitment to the custody of the director of the department of corrections under this paragraph "c", the court shall order the person to serve not less than thirty days nor more than one year in the county jail, and the person may be committed to treatment in the community under section 907.6.~~

~~63. a. Notwithstanding the provisions of sections 901.5 and 907.3, the court shall not defer judgment or sentencing, or suspend execution of any mandatory minimum sentence of incarceration applicable to the defendant under subsection 2, and shall not suspend execution of any other part of a sentence not involving incarceration imposed pursuant to subsection 2, if any of the following apply:~~

~~(1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with this chapter exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.~~

~~(2) If the defendant has previously been convicted of a violation of subsection 1 or a statute in another state substantially corresponding to subsection 1.~~

~~(3) If the defendant has previously received a deferred judgment or sentence for a violation of subsection 1 or for a violation of a statute in another state substantially corresponding to subsection 1.~~

~~(4) If the defendant refused to consent to testing requested in accordance with section 321J.6.~~

~~(5) If the offense under this chapter results in bodily injury to a person other than the defendant.~~

~~b.~~ All persons convicted of an offense under subsection 2 shall be ordered, at the person's expense, to undergo, prior to sentencing, a substance abuse evaluation.

~~be.~~ Where the program is available and is appropriate for the convicted person, a person convicted of an offense under subsection 2 shall be ordered to participate in a reality education substance abuse prevention program as provided in section 321J.24.

~~cd.~~ A minimum term of imprisonment in a county jail or community-based correctional facility imposed on a person convicted of a second or subsequent offense under subsection 2 shall be served on consecutive days. However, if the sentencing court finds that service of the full minimum term on consecutive days would work an undue hardship on the person, or finds that sufficient jail space is not available and is not reasonably expected to become available within four months after sentencing to incarcerate the person serving the minimum sentence on consecutive days, the court may order the person to serve the minimum term in segments of at least forty-eight hours and to perform a specified number of hours of unpaid community service as deemed appropriate by the sentencing court.

~~74.~~ In determining if a violation charged is a second or subsequent offense for purposes of criminal sentencing or license revocation under this chapter:

a. Any conviction or revocation deleted from motor vehicle operating records pursuant to section 321.12 shall not be considered as a previous offense.

b. Deferred judgments entered pursuant to section 907.3 for violations of this section shall be counted as previous offenses.

c. Convictions or the equivalent of deferred judgments for violations in any other states under statutes substantially corresponding to this section shall be counted as previous offenses. The courts shall judicially notice the statutes of other states which

define offenses substantially equivalent to the one defined in this section and can therefore be considered corresponding statutes. Each previous violation on which conviction or deferral of judgment was entered prior to the date of the violation charged shall be considered and counted as a separate previous offense.

85. A person shall not be convicted and sentenced for more than one violation of this section for actions arising out of the same event or occurrence, even if the event or occurrence involves more than one of the conditions specified in subsection 1.

96. The clerk of the district court shall immediately certify to the department a true copy of each order entered with respect to deferral of judgment, deferral of sentence, or pronouncement of judgment and sentence for a defendant under this section.

107. a. This section does not apply to a person operating a motor vehicle while under the influence of a drug if the substance was prescribed for the person and was taken under the prescription and in accordance with the directions of a medical practitioner as defined in chapter 155A or if the substance was dispensed by a pharmacist without a prescription pursuant to the rules of the board of pharmacy, if there is no evidence of the consumption of alcohol and the medical practitioner or pharmacist had not directed the person to refrain from operating a motor vehicle.

b. When charged with a violation of subsection 1, paragraph "c", a person may assert, as an affirmative defense, that the controlled substance present in the person's blood or urine was prescribed or dispensed for the person and was taken in accordance with the directions of a practitioner and the labeling directions of the pharmacy, as that person and place of business are defined in section 155A.3.

118. In any prosecution under this section, evidence of the results of analysis of a specimen of the defendant's blood, breath, or urine is admissible upon proof of a proper foundation.

a. The alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn within two hours after the defendant was driving or in physical control of a motor vehicle is presumed to be the alcohol concentration at the time of driving or being in physical control of the motor vehicle.

b. The presence of a controlled substance or other drug established by the results of analysis of a specimen of the defendant's blood or urine withdrawn within two hours after the defendant was driving or in physical control of a motor vehicle is presumed to show the presence of such controlled substance or other drug in the defendant at the time of driving or being in physical control of the motor vehicle.

c. The department of public safety shall adopt nationally accepted standards for determining detectable levels of controlled substances in the division of criminal investigation's initial laboratory screening test for controlled substances.

129. a. In addition to any fine or penalty imposed under this chapter, the court shall order a defendant convicted of or receiving a deferred judgment for a violation of this section to make restitution for damages resulting directly from the violation, to the victim, pursuant to chapter 910. An amount paid pursuant to this restitution order shall be credited toward any adverse judgment in a subsequent civil proceeding arising from the same occurrence. However, other than establishing a credit, a restitution proceeding

pursuant to this section shall not be given evidentiary or preclusive effect in a subsequent civil proceeding arising from the same occurrence.

b. The court may order restitution paid to any public agency for the costs of the emergency response resulting from the actions constituting a violation of this section, not exceeding five hundred dollars per public agency for each such response. For the purposes of this paragraph, "*emergency response*" means any incident requiring response by fire fighting, law enforcement, ambulance, medical, or other emergency services. A public agency seeking such restitution shall consult with the county attorney regarding the expenses incurred by the public agency, and the county attorney may include the expenses in the statement of pecuniary damages pursuant to section 910.3.

~~130~~. In any prosecution under this section, the results of a chemical test shall not be used to prove a violation of subsection 1, paragraph "b" or "c", if the alcohol, controlled substance, or other drug concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the chemical test does not equal or exceed the level prohibited by subsection 1, paragraph "b" or "c".